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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re R.L., et al., Persons Coming Under
the Juvenile Court Law.**

**ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,**

Plaintiff and Respondent,

v.

JASON T. AND RHONDA L.,

Defendants and Appellants.

A127665

**(Alameda County
Super. Ct. Nos. HJ06003630
HJ06003631
HJ06003632)
HJ08010863**

At a permanency planning hearing under Welfare and Institutions Code section 366.26,¹ if the juvenile court finds it is likely a child will be adopted, “the court shall terminate parental rights and order the child placed for adoption.” (§ 366.26, subd. (c)(1).) The statute thus creates a preference for adoption (§ 366.26, subd. (b)(1)), and the juvenile court must terminate parental rights unless certain specified exceptions apply. (§ 366.26, subd. (c)(1)(A), (B).) Two of those exceptions are at issue in this appeal. A juvenile court may refuse to terminate parental rights if it finds “a compelling reason for determining that termination would be detrimental to the child” because “[t]he

¹ All statutory references are to the Welfare and Institutions Code.

parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship” (§ 366.26, subd. (c)(1)(B)(i)), or because “[t]here would be substantial interference with a child’s sibling relationship”² (§ 366.26, subd. (c)(1)(B)(v).)

Rhonda L. (Mother) and Jason T. (Jason) appeal from a judgment terminating their parental rights. They argue the juvenile court erred in finding they failed to establish the existence of the beneficial relationship and sibling relationship exceptions. The juvenile court found that appellants did not meet their respective burdens of proof on these issues. We conclude the juvenile court committed no error. Accordingly, we will affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The family that is the subject of this case has an extensive history of involvement with the child protective services in Alameda, Contra Costa, and Solano Counties dating back to 1992. Because of the duration of the dependency proceedings and the number of minors involved, our recitation of the facts and procedural history will be rather lengthy. As the issues on appeal are somewhat narrow, we set forth only those facts essential to an understanding of those issues.

Mother has six children, four of whom are at issue in this appeal: R.L. (born 1996), Enrico M., Jr. (Enrico Jr.; born 1998), Jada T. (Jada; born 2004), and Emil. M. (Emil.; born 2007).³ Mother’s two other children, En. M. (En.; born 1990) and Em. M. (Em.; born 1994), are not involved in this appeal. Jada is the child of Mother and Jason. R.L.’s alleged father has not been located, and Enrico M., Sr. (Enrico Sr.), the father of the M. minors, is not a party to this case.

² For convenience, we will refer to the former exception as the “beneficial relationship exception” and to the latter as the “sibling relationship exception.”

³ Given that four of Mother’s children have uncommon names and share the same initials, we will abbreviate their first names to avoid confusion. We refer to R.L. by his initials only. (Cal. Rules of Court, rule 8.400(b)(2).) When referring collectively to the children who are the subject of this appeal, we will use the term “Minors” but will use the term “children” when referring collectively to the Minors and the other children who are not subjects of the appeal.

Initial Removal

The Alameda County Social Services Agency (the Agency) filed the dependency petition out of which this appeal arises on April 5, 2006, on behalf of En., Em., R.L., Enrico Jr., and Jada. It alleged Jason had committed acts of domestic violence against the children. The petition also alleged Mother had allowed Jason to violate a restraining order, had failed to protect the children from Jason, and had herself been physically abusive to En. On April 6, the juvenile court ordered the children detained and placed them in foster care.

The Agency's April 19, 2006 jurisdiction/disposition report documented interviews with the children in March and September of 2003 in which they described repeated instances of domestic violence between their parents and physical and emotional abuse from both Mother and Jason.⁴ The children told the child welfare worker they had frequently seen Jason drunk, and they recounted witnessing Jason throw things at Mother, attempt to hang himself, and stab himself in the hand. According to the report, the police had previously arrested Jason for domestic violence, and although Mother had asked him to leave several times, she continued to take him back. Jason was arrested in September 2003 after the child welfare worker substantiated allegations that Jason had physically abused both En. and Em. Although Mother was encouraged to seek counseling, she did not appear interested.

The report explained the incident leading to the petition. En., then age 15, ran away from home on March 30, 2006, and refused to return because she was fed up with the constant abuse from Jason and with Mother's continuing to allow Jason's return after incidents of violence. In her statement to the Agency, En. described Jason's history of drinking and violence and said he had destroyed her bedroom and "everything in the home." En.'s siblings verified her account and stated they did not feel safe in their home.

The Agency's assessment and evaluation observed that violence and abuse had been a problem for the family for years. Although Mother had voiced a desire to protect

⁴ The report noted Enrico Sr. was incarcerated in Avenal State Prison for felony child abuse.

her children, she had always returned to her old ways. She admitted to allowing Jason back into her home despite the existence of restraining orders and despite the abuse she had experienced. The Agency expressed “great concern” about the safety of the children in light of Jason’s inability to appreciate the violence and abuse he had perpetrated.

Both Mother and Jason submitted to the petition, and on May 18, 2006, the juvenile court sustained the allegations. The children were ordered removed and placed in foster care, although they were not all placed together. Reunification services were ordered for both Mother and Jason.

Efforts to Reunify

Mother initially participated in her case plan and visited the children once a week. The children reported that Enrico Sr. had been present at one of the visits, despite the fact that he was on probation and not permitted to be around them. Mother denied he had been at the visit. Although the child welfare worker had numerous discussions with Mother explaining that Enrico Sr. was not allowed to visit until cleared by his probation officer, Mother continued to permit him to attend visits with the children and then asked them not to tell anyone. For his part, Jason appeared motivated to comply with his case plan, and he visited Jada regularly.

At the six-month review hearing on November 8, 2006, the Agency reported that the children were placed in three different foster homes. En. was in one foster placement, R.L. and Enrico Jr. in another, and Em. and Jada in a third. Both Mother and Jason were participating in their case plans. Visitation was going well, with Mother visiting the children every other Saturday for six hours, and Jason visiting Jada every Sunday. The Agency recommended an additional six months of reunification services for the parents. The juvenile court accepted the recommendation and set the matter for twelve-month review.

At an interim review on December 13, 2006, the court found that the Agency had provided reasonable services to the parents but that Mother had made only partial progress and Jason had made none. It ordered reunification services extended for another six months.

The twelve-month review hearing was held on May 16, 2007. The previous month, Mother had given birth to Emil., who was living with Mother and was not a dependent of the court. Mother was participating actively in her case plan and visiting the children regularly. The Agency's status review report commended Mother on her progress, which it characterized as "partial," but expressed concern that having a new baby would lead Mother to depend even more on En. to care for her younger siblings.

Jason was also participating in his case plan but continued to have difficulty staying sober. The report rated his progress as "partial." The Agency's report stated that between December 2006 and May 2007, Jason had had 12 clean drug tests, three positive for alcohol, and six "no shows." He was reportedly drunk during a visit with Jada in February 2007, and he had not visited her since then. The child welfare worker asked Jason to rejoin his substance abuse class, but Jason later said he had lost hope for getting his daughter and staying sober. He also told the worker he did not feel he should be around his daughter "until he gets his life back together."

The Agency recommended continuation of reunification services to Mother and Jason, but termination of services to Enrico Sr. The juvenile court accepted those recommendations and set a further interim review hearing for August 2007.

The Agency's July 11, 2007 interim review report informed the court that Mother had been working hard on her case plan and had made significant progress. She had secured housing for herself and the children, had been consistent in attending therapy, and had visited the children every weekend. The Agency therefore recommended that the children be returned to Mother with family maintenance services. Jason had been unsuccessful in completing his case plan, although he did visit with Jada. The Agency therefore recommended that reunification services for Jason be terminated. Both parents agreed with the Agency's recommendations.

At the review hearing, the juvenile court adopted the Agency's recommendations. It terminated reunification services to both Mother and Jason, ordered the children placed with mother, and adopted a permanent plan of returning the children home.

Return to Mother's Custody

The children returned to mother's home, and the family was accepted into the family preservation program. The Agency's December 19, 2007 status review report stated that Jason was not in compliance with his case plan but was visiting Jada weekly. Mother was making progress but had difficult relationships with her daughters En. and Em. She was relying heavily on the older siblings to take care of the younger ones, and this was leading to parent-child conflicts. Attached to the report was a letter from the assigned family therapist, who opined that the family still had difficulties in communication and that family roles and expectations remained unclear. The Agency recommended that the children remain placed with Mother and that family maintenance services continue. The juvenile court adopted those recommendations and scheduled a further report and review for June 2008.

On May 7, 2008, police were called to Mother's home because Jason had come to the residence intoxicated and had threatened the family with a knife. According to the police report, Jason attempted to enter the home through a window. A police officer who spoke to Jason said he could smell alcohol on Jason's breath and that Jason's speech was slurred. The knife taken from Jason measured 17 inches with a 12-inch blade. Jason was arrested for public intoxication and carrying a concealed weapon.

Mother failed to appear for the review hearing on June 17, 2008, and a bench warrant was issued. The matter was continued to July 8, 2008, and both Mother and Jason were ordered to appear. On that date, the parents appeared and the court set the matter for a further review hearing on November 12, 2008.

The Second Removal

On September 17, 2008, the Agency filed a supplemental dependency petition on behalf of Em., R.L., Enrico Jr., and Jada. On the same day, it filed a petition on behalf of Emil. The allegations of the supplemental petition and Emil.'s petition were substantively identical. Both petitions charged that Mother had a substance abuse problem preventing her from caring for the Minors. They further alleged Mother had allowed Jason back into her home despite a restraining order prohibiting him from

contacting her or coming within 200 yards of her. The parents were also charged with exposing the Minors to ongoing domestic violence.

The Agency's September 18, 2008 detention report documented Em.'s account of the violent encounter with Jason that gave rise to the petitions. On the evening of September 14, 2008, Mother and Jason went out, leaving the children at home alone. When Mother and Jason returned home, both were drunk. The youngest child, Emil., was seated on the kitchen table in front of Jason, who passed out on top of her. Em. attempted to free Emil., angering Jason, who began to curse at her and throw butter on her homework. Em. called her father, Enrico Sr., for help, and Jason grabbed the cell phone out of Em.'s hand and struck her in the eye with it. When Em. hit back, Jason punched her in the face so hard she fell to the ground. He then kicked her in the back. During the entire altercation, Mother was so intoxicated she did not wake up or get up to intervene or protect the children. The situation escalated when Enrico Sr. arrived at the house and began hitting Jason. Jason's sister and brother-in-law arrived and allegedly tried to jump Mother. Jason broke most of the furniture in the house, slapped Mother in the face, and then tried to hit R.L. when the latter intervened to protect Mother. Mother threatened Jason with a glass vase, which Jason took from her hands and threw across the room. By this time, all of the children were awake and watching the incident, and Enrico Jr., Jada, and Emil. were standing behind Em. When the police arrived, Mother denied any knowledge of the restraining order against Jason and also denied seeing Jason punch or kick Em. Em. expressed shock that Mother seemed more concerned with protecting Jason than with protecting her children.

The detention report concluded that the physical abuse and domestic violence problems leading to the children's initial removal in 2006 had not diminished despite the provision of services. En. had turned 18 and had left the family. Em. had assumed a parental role both in caring for the younger siblings and in protecting them from Jason. The level of domestic violence in the home was escalating, and Mother was either unable or unwilling to protect herself and the Minors from domestic violence and physical abuse. Both Mother and Jason continued to consume alcohol, which impaired their parenting

and judgment. Em. and R.L. were taking the brunt of standing up to Jason and were therefore risking their own safety. The report concluded that without stronger intervention, the Minors were at imminent risk of further abuse and neglect.

On September 18, 2008, the juvenile court found removal was necessary and ordered the children detained. Enrico Sr. was found to be Emil.'s presumed father. It set a further hearing for October 1, 2008. The children were placed in foster care.

The combined jurisdiction/disposition report prepared for the October 1, 2008 hearing recommended that the children remain in custody and that no services be provided to Mother, since she had already received 18 months of services and yet "safety issues" remained. No services were recommended for Jason as his services had already been terminated. The Agency explained that it had encouraged liberal visitation between Mother and her children and had recommended visits three times weekly. Mother did not appear interested in visiting her children that often and had missed scheduled visits in the previous month. She had provided only a small suitcase of clothing for the children and had taken a long time to follow through on providing the foster parents with additional clothing for the children.

At the October 1 hearing, Mother submitted to the allegations of the petition as to Emil., and the juvenile court found them true. It also found true the allegations of the supplemental petition regarding the other children. The court ordered the children placed in foster care and denied reunification services. Mother was granted visitation but Jason was not. The juvenile court then set the matter for a section 366.26 hearing.

Permanency Planning

Further hearings took place on January 29 and March 17, 2009. The children had been placed in three separate foster homes, and Mother was visiting them twice a month.

An adoption assessment completed on April 9, 2009, found Em. and the Minors adoptable, but concluded a permanent planned living arrangement was appropriate for Em., who was then 14 and objected to termination of parental rights. R.L. and Enrico Jr. expressed a desire to be adopted by their foster parents, who were also Emil.'s caregivers. The Agency's April 23, 2009 report found adoption was the appropriate plan for the

Minors and requested a 90-day continuance so an adoptive home study could be completed. As to Em., the Agency recommended a permanent planned living arrangement with a long-term goal of legal guardianship.

Both Mother and Jason appeared at the hearing on April 23. Mother opposed adoption for R.L., Enrico Jr., and Emil., but not for Jada. Jason was not opposed to having his niece adopt Jada. Counsel reported Em. did not want to be adopted and did not want to be placed with her siblings. The court ordered a plan of permanent placement for Em. with a specific goal of legal guardianship.

The Section 366.26 Hearing

The section 366.26 hearing began on October 22, 2009. The Agency's report recommended termination of parental rights so the Minors could be adopted. Both Mother and Jason opposed the recommendation. The Agency reported on visits between Mother and the Minors, and it noted Mother had missed visits in September 2009. While Mother was loving and appropriate during the visits that occurred, the Minors interacted more with one another than with Mother. When Jada fell during a visit, she reached out primarily to Em. for comfort. Jada had had her first visits with Jason since September 2008, and the visits had gone well.

The Agency's report explained the Minors "have been through instability and multiple placements over three and a half years." It took note of the fact that Mother and Jason had been visiting and had recently begun to take steps to address their problems with substance abuse, domestic violence, and physical abuse of the children. It cautioned, however, that "[t]hese are very early steps, and the previous return to [Mother] ended in a major upheaval for the children." The report concluded that after the lengthy period of dependency, "the children should not have to wait any longer for permanency. They need a safe, stable home with parents that they can depend on for the rest of their lives. Adoption is the appropriate permanent plan for [the Minors]."

Both Mother and Jason testified at the section 366.26 hearing. In addition, the juvenile court heard testimony from the social worker assigned to Minor's case. The final witness was Em., who filed a section 388 petition on December 7, 2009, objecting

to the adoption of her siblings and seeking either placement of all the children with Mother or legal guardianship with increased visitation with her siblings. The juvenile court granted a hearing on the section 388 petition, and the matter was heard on December 7, 2009.

Mother testified about the parenting and domestic violence classes she had attended and counseling she had received. She also testified about her twice-monthly visits with the children and stated she wanted her children returned to her. When asked to describe how the Minors were benefitting from their contact with her, Mother explained the Minors “love me and they’re concerned about my well-being. I mean, if they have to be away from me and wonder how I’m doing, they’re not going to be happy.” She felt contact with her was beneficial to the Minors because “they need to hear [her] voice.” On cross-examination, Mother admitted that she had heard the Minors’ foster parents would permit her to have contact with the Minors even after they were adopted and that the Minors’ foster father had told her that after adoption, Mother would see the Minors more frequently than she was currently seeing them. She further admitted that, except for Em., none of her children had told her they did not want to be adopted. When asked to identify the harm to the Minors that might result from adoption, Mother said only that the Minors “will not be able to see their own family.”

Jason testified about his visits with Jada, saying they had gone well and that the two of them expressed love and affection for each other. He admitted, however, that he and Mother had never “really officially . . . lived together.” He also acknowledged that a restraining order issued in 2003 had prevented him from seeing his daughter until it was modified in 2005. He testified that he had been unable to see his daughter after the incident leading to his arrest in September 2008 and that the juvenile court had only permitted him to resume weekly visitation a year later.

In his testimony, Jason displayed a lack of awareness of events in his daughter’s life. Between September and November 2008, he was unaware Jada had been placed in foster care. Until he participated in a meeting with the Agency, he did not know Jada was having problems in school or that she had been masturbating. He did not know

Jada's foster parents and had never spoken to them. He also had never spoken about his daughter to anyone at her school.

When asked about the incident in September 2008, Jason denied there had been domestic violence between him and Mother. Jason contended there was no broken furniture in the family's home after that incident, although the juvenile court had sustained the Agency's allegation to this effect on October 1, 2008. He also denied having hit or kicked Em. during that incident.

The social worker testified that despite Mother's progress in counseling and in the classes she had taken, she was unable to meet her children's need for a parent. He described Mother's relationship with the Minors as one involving "familiarity" and "care," but noted the Minors were more bonded to one another than to Mother. He said he had no evidence that when Mother had responsibility for the children that "she makes the best decisions." The social worker opined that termination of Mother's and Jason's parental rights would not be detrimental to the Minors. He also did not believe termination would result in interference with the Minors' relationship to Em., because the foster parents had assured him they had no intention of cutting the Minors' biological family out of their lives. He also said he would take steps to ensure the Minors would continue to have contact with Em. Even assuming a "worst case scenario," in which Em. were completely cut out of the Minors' lives, the social worker testified that the benefit of adoption would outweigh any detriment caused by the loss of that relationship.

Em. testified that she felt her relationship to the Minors had been "fading away" since they had been in foster care. She explained that she had requested a separate placement from her siblings because she "didn't want to be the caregiver[.]" Em. told the court she would not live with the Minors in the home of their foster parents because she wanted all of the children to return to Mother. She explained that part of her reason she was opposed to her siblings' adoption was that she wanted to make Mother happy.

The juvenile court issued a written decision on February 1, 2010. It found that neither Mother nor Jason had met their respective burdens of proof on the beneficial relationship exception. The court ruled they had failed "to show that the benefit to the

[Minors] of maintaining the parent-child relationship outweighs the benefit of adoption.” Turning to the sibling relationship exception, the juvenile court reviewed Em.’s testimony but found she had failed to meet her burden of showing “a compelling reason for determining that termination would be detrimental to the [Minors] because there would be substantial interference with the [Minors’] sibling relationship compared to the benefit of legal permanence through adoption.” It therefore terminated Mother’s and Jason’s parental rights.

Mother and Jason filed timely notices of appeal.

DISCUSSION

Mother and Jason argue the juvenile court erred in finding they had failed to meet their burdens of proof on the beneficial relationship and sibling relationship exceptions. After setting out the applicable burdens of proof and standard of review, we address the merits of appellants’ arguments. As we explain, we conclude the juvenile court committed no error and will accordingly affirm.

I. *Exceptions to Adoption Under Section 366.26(c)(1)(B) – Burden of Proof and Standard of Review*

After a child is found adoptable, the juvenile court can avoid terminating parental rights only if it finds a “compelling reason” that termination would be detrimental to the child because of the existence of one or more circumstances set out in the statute.

(§ 366.26, subd. (c)(1)(B).) The specified statutory circumstances are “*exceptions* to the general rule that the court must choose adoption where possible” (*In re Celine R.* (2003) 31 Cal.4th 45, 53, original italics.) The burden of establishing the existence of one of the section 366.26, subdivision (c)(1) exceptions to adoption rests on the party claiming the exception. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.) In the court below, appellants argued that the beneficial relationship and/or sibling relationship exceptions applied, and they therefore bore the burden of proof on these issues. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 936 [parent has burden of proof to show applicability of continuing beneficial relationship exception]; *In re Jacob S.* (2002) 104

Cal.App.4th 1011, 1017 [parent bears burden of showing that sibling relationship exists and that its severance would be detrimental to child].)

The parties differ on the standard we should use to review the juvenile court's determination on the beneficial relationship and sibling relationship exceptions. Mother asserts the standard of review is substantial evidence. Jason acknowledges that courts have applied both the substantial evidence and abuse of discretion standards, but contends the differences between the standards are insignificant and that reversal is required under either standard. The Agency urges us to apply the abuse of discretion standard to the trial court's determinations. We are not in complete agreement with any of these positions, but as we explain below, the precise standard of review chosen has little practical effect in this case, as we would affirm the juvenile court's judgment even under the most exacting standard.

Courts have applied differing standards of review to orders determining the applicability of the beneficial relationship exception. Most have reviewed the orders for substantial evidence. (See, e.g., *In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1333; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) Others have applied an abuse of discretion standard. (See, e.g., *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) We believe both standards play a role.

The beneficial relationship exception requires a parent to show that he or she has had regular visitation and contact with the child and that the child would benefit by continuing the relationship. (§ 366.26, subd. (c)(1)(B)(i).) These are essentially factual determinations that should be upheld on appeal if supported by substantial evidence. On the other hand, the ultimate decision as to whether these factors outweigh the benefit of adoption, i.e., whether there is "a compelling reason for determining that termination would be detrimental to the child" (§ 366.26, subd. (c)(1)(B)), is a "quintessentially discretionary determination." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.) In any event, the "practical differences between the two standards of review are not significant," and as a reviewing court, we should interfere only if the facts, viewed in the

light most favorable to the judgment, were such that no reasonable judge could have taken the challenged action. (*Ibid.*)

A similar analysis applies to our review of the juvenile court's determination regarding the sibling relationship exception. That exception requires the parent to demonstrate the existence of a significant sibling relationship and detriment to the child from severance of that relationship. (§ 366.26, subd. (c)(1)(B)(v); see *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952.) Once again, these are factual determinations we are constrained to uphold if they are supported by substantial evidence. Deciding whether the benefit to the child of continuing the sibling relationship would outweigh the benefit of legal permanence through adoption, however, is also a "quintessentially discretionary determination" that may be reversed only for abuse. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.)

With these standards in mind, we turn to the merits of the parents' appeals.

II. *The Beneficial Relationship Exception*

To establish the existence of the beneficial relationship exception under section 366.26, subdivision (c)(1)(B)(i), a parent contesting termination of parental rights must show "both regular visitation and contact [with the child] and the benefit to the child in maintaining the parent-child relationship." (*In re Helen W.* (2007) 150 Cal.App.4th 71, 80-81.) To do so, "the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits – the parent must show that he or she occupies a parental role in the life of the child." (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1527.) The parent must prove that "severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be *greatly harmed*" (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575, italics added.) The Agency is under no obligation to produce evidence that the dependent minor would *not* benefit from continued parental contact (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466), and the juvenile court is not required to ensure that such evidence is produced. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343.)

A. *Jason*

Jason contends he met his burden of proving the first prong of the beneficial relationship exception – that he maintained regular visitation and contact with his child – because there was substantial evidence he visited Jada consistently. In its written ruling, the trial court noted that visits between Jason and Jada “were not ordered until recently due to a restraining order against [Jason] for domestic violence.” It then found Jason had failed to meet his burden of proof on this issue.

Jason concedes that before he was permitted to resume visits with his daughter in August 2009, he had not visited her for approximately 11 months. Moreover, the record discloses that after Jada was ordered detained in April 2006, Jason initially had no contact with her. He then visited her once a week until February 2007 when, according to the May 16, 2007 status review report, his visits ceased completely due to a drunken incident during a visit. Jason appears to have resumed weekly visitation in July 2007. Visits were later suspended after Jason was arrested in May 2008 because he had violated a restraining order by appearing at Mother’s home intoxicated and armed with a 17-inch hunting knife.

In September 2008, Jason was involved in another domestic violence incident when he returned with Mother to her home. Jason was drunk, struck Em. in the face, and reportedly proceeded to destroy the computer and most of the furniture in the residence. Jada was then removed from Mother’s home and placed in foster care. On October 1, 2008, the juvenile court denied visitation to Jason because there was an outstanding restraining order against him because of domestic violence. Jason was only permitted to resume supervised visitation in August 2009, and he saw Jada every other week for two hours. The last visit occurred on Thanksgiving Day 2009.

From this evidence, the juvenile court could well conclude Jason had failed to meet his burden of demonstrating that he had “maintained regular visitation and contact with the child[.]” (§ 366.26, subd. (c)(1)(B)(i).) This is particularly true when one considers that it was Jason’s dangerous and threatening behavior that led the juvenile court to suspend visitation.

Jason’s arguments regarding the benefit to Jada of continuing the relationship fare no better. Jason claims he and his daughter are bonded, enjoyed their visits together, and have a “positive relationship.” Even assuming all of this is true, it is insufficient to meet Jason’s burden under section 366.26, subdivision (c)(1)(B)(i). “[A] *parental* relationship is necessary for the exception to apply, not merely a friendly or familiar one.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350, original italics.) Jason points us to no evidence that he provided Jada with the kind of “nurturing that is characteristic of a parental relationship.”⁵ (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 854.) And “[i]t would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship.” (*In re Jasmine D.*, *supra*, at p. 1350.) Moreover, reviewing courts have affirmed the termination of parental rights in cases in which the evidence was far more favorable to the parent than it is here. (See, e.g., *In re Jason J.*, *supra*, 175 Cal.App.4th at p. 938 [minor enjoyed visits with father and objected when they ended; father was affectionate and appropriate, and social worker did not doubt father loved minor]; *In re Casey D.* (1999) 70 Cal.App.4th 38, 52 [no dispute that mother was loving and appropriate with minor or that minor enjoyed relationship].)

We therefore hold Jason has failed to demonstrate the juvenile court erred in concluding he had not met his burden of proof under section 366.26, subdivision (c)(1)(B)(i). Viewing all the evidence in the light most favorable to the juvenile court’s decision, we cannot say that no judge could reasonably have made the order the juvenile court did. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.)

B. *Mother*

At the outset we observe that Mother’s argument concerning the beneficial relationship exception consists largely of a recitation of the evidence in the record that is

⁵ Indeed, the record suggests the contrary. Quite apart from Jason’s previously discussed problems with substance abuse and domestic violence, Jason does not appear to have taken an active interest in his daughter’s life. He testified that between September and November of 2008, he was not even aware his daughter was in foster care. He also testified he was unaware Jada was having problems in school and admitted he had not talked to anyone at her school about her.

favorable to her. Because of this, we would be entitled to hold that she has forfeited this point. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 [party challenging decision based on absence of substantial evidence to support it must set forth all material evidence on the issue and not merely its own evidence or argument is waived].) Even if we treat Mother's argument as properly presented, we conclude it is meritless.

Mother asserts she maintained regular visitation and contact with the Minors because she made all the visits she was allowed. This claim is simply false. Shortly after the Minors were removed from her custody in September 2008, Mother missed a visit with the Minors, and the social worker reported hearing she had gone to a church carnival. Although the child welfare worker encouraged Mother to visit three times per week, Mother did not act interested in seeing them that frequently. In the two months immediately preceding the permanency planning hearing, Mother missed one visit without calling, canceled another, and arrived at a third so late that the visit would normally have been canceled.⁶ There is thus ample evidence to support the juvenile court's finding that Mother had missed visits with the Minors.

In addition to her failure to visit the Minors consistently, it does not appear that Mother occupied a true parental role in their lives. (See *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) Most significant in this regard is the uncontested evidence that Mother repeatedly failed to protect her children from domestic violence and physical abuse. Despite witnessing repeated instances in which Enrico Sr. and Jason did physical harm to her children, Mother continued to allow these violent men into her home. Her failure to recognize her children's need for protection certainly justifies the juvenile court's finding that the benefits of adoption outweighed whatever benefit the Minors might get from their relationship with Mother. (See *In re Jason J.*, *supra*, 175 Cal.App.4th at p. 938.)

⁶ These facts distinguish this case from those on which Mother relies. In both of those cases, the evidence showed the mother had visited as often as permitted by the juvenile court's visitation orders. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 690; *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1537.)

Moreover, Mother presented no evidence at the section 366.26 hearing that Minors have any needs that only she can meet. (*In re Helen W.*, *supra*, 150 Cal.App.4th at p. 81.) Nor did she present any evidence to demonstrate that her relationship with Minors is so significant that its termination would cause them great detriment. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; *In re Angel B.*, *supra*, 97 Cal.App.4th at p. 468.) In contrast, the social worker testified to his belief that termination of Mother's rights would not be detrimental to the Minors, and it was for the juvenile court alone to weigh that evidence against Mother's testimony. (See *In re Casey D.*, *supra*, 70 Cal.App.4th at p. 52.)

That Mother loves the Minors and has behaved appropriately during visits with them is not enough to outweigh the security and stability of an adoptive home. (*In re Helen W.*, *supra*, 150 Cal.App.4th at p. 81.) Mother has had the benefit of services since the inception of these dependency proceedings, yet she has still not succeeded in overcoming the problems that led to Minors' dependency. In such circumstances, we cannot say the juvenile court abused its discretion in concluding Minors would be better off in their prospective adoptive home.⁷ (See *In re Jasmine D.*, *supra*, 78 Cal.App.4th at pp. 1351-1352.)

III. *The Sibling Relationship Exception*

To determine the applicability of the sibling relationship exception, the juvenile court employs a two-step process. It first looks to whether terminating parental rights would cause "substantial interference" with the child's sibling relationship. (§ 366.26,

⁷ Despite Mother's claims, this case does not resemble the Fourth District's opinion in *In re S.B.* (2008) 164 Cal.App.4th 289. In that case, there was no dispute that the father had maintained regular and consistent visitation and that he had an "emotionally significant relationship" to the child. (*Id.* at p. 298.) In addition, the father had given up drug use, maintained his sobriety, and complied with his case plan in all respects. (*Ibid.*) As a consequence, the Court of Appeal concluded "there is no evidence to support" the juvenile court's finding that the father "did not have some type of parental relationship to S.B." (*Ibid.*) And as the Fourth District later explained, "[t]he *S.B.* opinion . . . does not . . . stand for the proposition that a termination order is subject to reversal whenever there is 'some measure of benefit' in continued contact between parent and child." (*In re Jason J.*, *supra*, 175 Cal.App.4th at p. 937.)

subd. (c)(1)(B)(v); *In re L.Y.L.*, *supra*, 101 Cal.App.4th at pp. 951-952.) The court considers “the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest” (§ 366.26, subd. (c)(1)(B)(v).) If the juvenile court finds that terminating parental rights would substantially interfere with the sibling relationship, it next weighs the benefit to the child of continuing the sibling relationship against the benefit of gaining a permanent home by adoption. (*In re Celine R.*, *supra*, 31 Cal.4th at p. 61.)

Thus, a parent invoking the sibling relationship exception “must show the existence of a significant sibling relationship, the severance of which would be detrimental to the child.” (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 952.) As the California Supreme Court has explained, this showing is not easily made: “[T]he ‘sibling relationship exception contains strong language creating a heavy burden for the party opposing adoption. . . .’ [Citations.]” (*In re Celine R.*, *supra*, 31 Cal.4th at p. 61; see *In re Valerie A.* (2007) 152 Cal.App.4th 987, 1014 [observing that “application of this exception will be rare”].)

Mother contends terminating parental rights “served to diminish and eventually extinguish the close relationship among [the minors] and Em. without offering the countervailing benefit of an increase in the permanence and stability of their placement.”⁸ Beyond this conclusory assertion, however, she offers little in the way of actual argument. (See Cal. Rules of Court, rule 8.204(a)(1)(B) [briefs must support each point by argument and citation of authority].) Although Mother cites evidence of the Minors’ significant attachment to their sister, she does not direct us to evidence demonstrating how termination of the *parents’ rights* would interfere with the relationship between Minors and Em.

⁸ Jason does not make a separate argument regarding the sibling relationship exception, but he joins in the arguments in Mother’s brief. (Cal. Rules of Court, rule 8.200(a)(5).)

Mother's argument falters from the very start, because the statute directs the juvenile court "first to determine whether terminating parental rights would substantially interfere with the sibling relationship" (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at pp. 951-952.) Mother appears simply to assume that termination of parental rights will result in a substantial interference in the Minors' relationship with Em. The record, however, belies any such claim. The social worker testified that he would take steps to ensure the Minors would continue their relationship with Em. He explained that the Minors' foster parents had expressed to him a desire to see the Minors' biological family, including Em., involved in their lives. He further testified that Minors' foster parents have a positive relationship with Em. and he had no reason to believe they would not allow sibling contact. Em. herself testified her relationship to her siblings' foster parents is good, explaining that she can confide in them and that they check on her to see how she is doing in school. This testimony indicates termination would cause no substantial interference with the Minors' relationship to Em. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 254 [where social worker wanted to place minor in adoptive home that would allow sibling contact, court concluded there would be no substantial interference with sibling relationship].)

Moreover, there are factors beyond termination of parental rights that will determine whether the Minors and Em. continue their relationship. As the trial court noted in its decision, Em. testified that she did not wish to live with her siblings in the home of their foster parents. According to the Agency's March 17, 2009 status review report, Em. had been requesting a placement separate from her siblings since the first time she was brought into custody. While R.L. and Enrico Jr. told the social worker they wanted to be adopted by their foster parents, Em. has no desire to be adopted. Thus, there is "the natural rift created by the fact that [Em.] wants to stay with her mother" but her brothers want to be adopted. (*In re Jacob S.*, *supra*, 104 Cal.App.4th at pp. 1018-1019.) Whether the Minors' relationship with Em. continues therefore depends far more on whether the siblings want it to continue than it does on whether the parents' rights are terminated. (*Id.* at p. 1019.)

Finally, even if one were to assume, contrary to the record evidence, that termination of the parents' rights would result in a substantial interference with the sibling relationship, Mother has failed to demonstrate that continuation of the sibling relationship outweighs the benefit of adoption. (See *In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 953.) The social worker was asked for his opinion about whether the benefits of adoption for the Minors would outweigh the detriment from interference with the sibling relationship. In response, he testified that in the "worst case scenario" in which Em. was "cut out of the lives of her siblings," there would be detriment to the Minors, but the detriment would not outweigh the benefit the Minors would receive from the permanency of adoption.

This testimony constitutes substantial evidence supporting the conclusion that the sibling relationship exception did not apply. (See *In re I.I.* (2008) 168 Cal.App.4th 857, 872-873 [affirming juvenile court's finding that sibling relationship exception did not apply even where it was undisputed that children shared close and strong bonds; social worker testified that children's best interests were served by adoption and keeping children together was not in their best interests].) It necessarily follows that the parents have failed to meet their burden on appeal to demonstrate that no reasonable judge could have made the decision the juvenile court did. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.)

DISPOSITION

The judgment is affirmed.⁹

⁹ Because we affirm the judgment terminating the rights of both parents, we need not reach their contention that a reversal as to one parent would require reversal as to the other.

NEEDHAM, J.

We concur.

SIMONS, Acting P. J.

BRUINIERS, J.